IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4321 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YASINBHAI NOOR M BHURANIA - Petitioner(s)
Versus
BHURANIA RAFIKBHAI HASANBHAI & 4 - Respondent(s)

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Appearance :
MR MC BHATT for Petitioner(s) : 1,
M/S TRIVEDI & GUPTA for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 4.
GOVERNMENT PLEADER for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 16/03/2007

ORAL JUDGMENT

1. The short facts of the case are that the father

of the petitioner Noormohammad Bhurania was granted three parcels of land bearing Survey Nos. 92/1, 93 & 94 situated at Dungriasan, Taluka Siddhpur by the Collector vide order dated 30.04.1976.

2. It appears that the land was a waste land and it was given to the father of the petitioner for cultivation. It is the case of the petitioner that thereafter, the father of the petitioner expired and the petitioner has acquired the land. As per the petitioner, the land was developed, cultivation was made to the extent of the availability of the land and Babool & Eucalyptus trees were grown over the said land. It appears that the respondent No.1 made application to the District Collector regarding non-observance of certain conditions and on that basis, the proceedings came to be initiated against father of the petitioner by the Deputy Collector, but thereafter, passed the order on 20.05.1994, whereby he found that the cultivation was not made during certain period because of non-availability of the water and during the monsoon, the cultivation has been made and he found that there was no breach of the condition and hence, the chapter was filed. It appears that respondent No.1 carried the matter before the Collector and the Collector passed the order of 01.09.1995, whereby he found that the trees were grown and also the

cultivation was made and there was no case for breach of the condition. It was also observed by the District Collector that the respondent No.1 is a third party and because of family dispute, it appears that the application is made and therefore ultimately, the appeal was dismissed by the District Collector. It appears that the respondent No.1 further carried the matter before the State Government and the State Government found that the cultivation was required to be made over the whole area and as per the report of the Circle Inspector, such position is not reflected, there is breach of condition, and therefore, the revision was allowed and the order of the Collector was set aside. It is under these circumstances, the present petition.

3. I have heard Mr. Rawal, learned counsel for Mr.M.C. Bhatt, learned counsel, for the petitioner, Mr. Naik for respondent No.1 and Mr.Chhaya, learned AGP for respondent Nos.2 to 5 State Authorities.

4. It appears from the submissions made on behalf of the learned counsels appearing for the respective parties that as such, the respondent No.1 is not pursuing the litigation as if an advisory litigation. It is true that the respondent No.1 was the complainant or the person who made the application before the

authority, and based on such application, the proceedings came to be initiated. However, no right can be read of respondent No.1 over the land in the present litigation, as if, the person to be directly affected by the action of the Government condoning the breach or for resumption of the land on account of the alleged breach. It may be that the respondent No.1 as a public spirited person, was well within his right to move the appropriate application but after the application is decided by the authority upon the examination of the record, normally the matter would end, but it appears that the respondent No.1 possibly anticipated that the land would be alloted to him, if it is resumed by the Government from the petitioner or may be on account of some extraneous consideration, has persued the matter throughout. It may not be the only ground for consideration but, is certainly one of the circumstance, which this Court may consider at the time when the legality and validity of the orders passed by the State Government in revisional jurisdiction is to be decided and examined.

5. It further appears that in a matter where the land is granted or allotted on condition of its cultivation by the allottee, even if the actual cultivation was not made while taking action on the ground of alleged breach of the condition,

it would be required for the authority to examine as to whether there were any circumstances beyond the control of the person concerned and whether the person concerned had made sincere attempt to comply with the condition by development of the land. Such was the approach on the part of the Dy. Collector and Collector when the matters were examined. The Deputy Collector found that the Cultivation were made and during the some period, on account of scarcity of the water, cultivation was not made and therefore, it was found that in view of the peculiar circumstances, it cannot be said that there was any breach of the condition and therefore, the action for resumption of the land was not taken. It appears that the discretion was exercised by the Deputy Collector and its confirmation thereof by the Collector were proper. However, the State Government in the revisional jurisdiction, has by committing error apparent on the face of record, passed the order on the basis that the cultivation was to be made over the whole area by ignoring the fact that the trees were also to be grown as per the conditions as of allotment and further, the cultivation was made over the certain area. It further appears that the State Government relied upon the report of the Circle Inspector which was prepared ex parte. It was also not examined by the State Government as to whether there is any irrigation facility to the land or not. It

was required for the State Government to exercise the power, keeping in view the restrictions of its revision jurisdiction. But the perusal of the order passed by the State Government shows that the power is exercised as if the appellate authority against the order of the Collector.

6. Under these circumstances, it appears that the State Government has committed jurisdictional error and there are errors apparent on the face of record.

7. In view of the aforesaid observations, the impugned order passed by the State Government dated 21.05.1996 is quashed and set aside. Petition is allowed to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

(JAYANT PATEL, J.)

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